

EXCELLENCE IN MIGRANT PROGRAMS A VERY PRELIMINARY ANALYSIS

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INTRODUCTION

The March 2000 migrant conference offers a unique opportunity to address how LSC, the "migrant programs"¹ and the national legal services organizations CLASP and NLADA can work together to improve the delivery of legal services to migrant farmworkers. LSC has not tackled the basic delivery issues since the section 1007(h) study (1977-1980). While some terrific work was done in 1994 and 1995 by the Migrant Delivery Working Group and the Farm Worker Project Group, the fruits of that labor have not been generally known outside of those groups nor has the civil legal assistance community generally engaged in serious consideration of fundamental delivery questions on service to migrant farm workers.

The four papers that have been circulated previously frame a set of very important issues for discussion and debate. Two stand out:

- How should the service responsibilities between "Migrant Programs" and Basic Field Programs be divided?
- What should be done to improve the delivery of services to migrant farm workers by "Small Migrant Programs?"

Both of these questions raise very fundamental issues that go to the core of service delivery and LSC funding policy. LSC earmarks funding for only two client groups - migrant farmworkers and Native Americans. For all other client groups, even if they face severe access barriers or special legal problems, it is up to the LSC grantee to make the fundamental decisions about service delivery. Subject to Congressional restrictions on what a program can do or whom it can service, LSC-funded programs

¹Throughout the paper the term "migrant program" or "migrant provider" will be used. Technically, there are no independent migrant programs or providers. All providers are basic field programs that get both a basic field grant and a migrant grant.

determine their own priorities and allocation of resources within their service areas. Subject to some very broad parameters, programs can decide whom to serve, what level of service to provide, and how to distribute staff.

When a funder earmarks funding for a particular client group, the nature of the decisions faced by the grantee often changes. The grantee must focus on how to reach the specific client group and provide services which the funder requires. To make this conceptual point more concrete, the fundamental question for the provider is not whether it should allocate some fiscal, administrative and staff resources to migrant farmworkers, but how will it allocate its resources to provide concrete service to migrant farmworkers. And when the provider does not target its services to the most pressing needs of the migrant farmworkers in a state, i.e., it does not divide responsibilities between what a general program can do and what a migrant component should do, then funders (or those who believe that earmarked funds are for a specific purpose) cry foul and seek to limit what the earmarked funds can be used for. Similarly, when the earmarked resources are so small that the provider cannot effectively and efficiently target its resources on the client group to be served, either the funder (or those who are ingrained in work for the client group) seek ways to enlarge the earmarked resources so that they can be used efficiently and effectively. Thus, the "Small States" subcommittee of the Farmworker Project Group has proposed what is called a "critical mass" of funding necessary to ensure effective and efficient services to the target client group, i.e., migrant farmworkers.

Of course, those recipients of earmarked funding who do not want to be limited in what the earmarked funding can be used for, object to the limitation. And, those recipients of small but still significant amounts of earmarked funding object to the framework suggested by those who propose to in one way or another take the earmarked funding away from the control of the recipient. In both cases, the battle is waged over issues of definition and control.² To be specific:

- Those opposed to limiting how the earmarked funding can be used ask: Where does it say that funding for migrants is for status problems, and not to serve any of the legal problems of migrants? And with limited funds for civil legal assistance generally, why should not migrant funds be used to serve any of the legal problems of migrant farm workers?
- Those opposed to losing their earmarked funds, either directly or at least losing control over them, argue: On what basis is \$400,000 or \$200,000

²See John F. Ebbott, "The Importance of Local Presence and Money to the Delivery of Migrant Legal Services: A Basic Field Director's Response to 'Small Migrant Legal Services Programs: Recommended Responses to the Challenges'" and Kevin Magee, Memorandum dated November 12, 1999 on the small states recommendation to Midwest migrant programs.

chosen as the "critical mass" for effective and efficient delivery of migrant services? Is not the real question whether a particular provider is using the migrant funds effectively and effectively to serve the migrant population in his service area, e.g. state?

There follows the inevitable response that: the critics have overstated their case, the status quo is unacceptable, the proposal for evaluating programs is unrealistic and that regional or multi state programs do not imply that there will not be local offices in a state which does not house the regional or multi-state program.³

Often the resolution of such a debate is to duck the issues or reach an impasse between those with differing views. Usually, the only consensus is to seek increased earmarked funds available for all so that all of a migrant's legal problems can be addressed in whatever state the legal problem arises.

As long as we focus on the earmarked funding as the key organizing framework for discussion, we will be focusing on these two fundamental issues.

Perhaps - heretical as it may sound - we can get further ahead in our common pursuit of improved delivery of legal services to migrant farmworkers by refocusing the debate away from the issues raised by earmarked funding and toward the questions of how we can most effectively and efficiently use the resources available - both earmarked LSC funding, general LSC funding, non-LSC funding - and the range of providers that are available - LSC funded programs, non-LSC programs, private attorneys and law students. To do so will require a fundamental rethinking of the basic conceptual framework in which the migrant community has operated. And it will mean taking some risks of trust between leaders and staff of "migrant programs" on the one hand and the leaders and staff of general programs on the other.

One framework for this approach is the comprehensive, integrated statewide delivery system which both LSC and NLADA/CLASP have been advocating, though with somewhat different points of emphasis. Another framework is to look at the migrant delivery system as a whole. Combining these two, might produce a new set of directions that would produce better overall delivery of services to migrant farmworkers both within a state and as an earmarked funding delivery system. And, given the precarious political balance in which migrant earmarked funding exists, such an approach might also be more politically viable for the near future.

I begin by a brief review of how we got where we are today.

³See Memo from Bill Beardall responding to Kevin McGee's Comments on Small States Recommendations, November 29, 1999.

HISTORY OF MIGRANT FUNDING

Pre-LSC

To respond to the severe problems of migrant farmworkers and to serve their legal needs, the Office of Economic Opportunity (OEO) began several special legal services programs for migrants. The first such program was established in 1969; eight others were started over the next three years.

These programs and components were originally funded and administered by the Migrant and Seasonal Farmworker Branch of OEO under Title III-B of the Economic Opportunity Act. In October of 1972, an agreement was reached between the Office of Legal Services (OLS) and the Migrant Branch that provided for the Migrant Branch to continue to fund migrant legal services while OLS would administer the grants.

In December of 1973, Section 303 of the amendments to the Comprehensive Employment and Training Act was passed. This section gave authority to the Department of Labor (DOL) to set up programs for migrant and seasonal farmworkers. Under the authority of this legislation, all programs and funds of OEO's Migrant and Seasonal Farmworker Branch were transferred to DOL in FY 74. An agreement was reached between the offices of DOL and OEO Office of Legal Services that DOL would return to OEO the funds which had been used to support the migrant legal services programs and components. This agreement was renewed for FY 75.

LSC - The Early Years

On October 14, 1975 the Legal Services Corporation became responsible for all legal services programs under the Economic Opportunity Act. When the Legal Services Corporation took over, there were 11 migrant programs and components, including the Migrant Legal Action Program (MLAP).⁴ The Corporation first requested funds from Congress on July 23, 1975 but did not include funds for the DOL migrant programs because it was assumed that DOL would continue to provide approximately \$1 million

⁴The original migrant programs and components were: Maricopa County Legal Aid Society, Farmworker Division, in Phoenix, Arizona; Colorado Migrant Legal Services, a division of Colorado Rural Legal Services; Milwaukee Legal Services Migrant Legal Services Program; Neighborhood Legal Assistance Program, Migrant Division in South Carolina; Michigan Migrant Legal Assistance Project, a component of the Legal Aid Foundation of Chicago; Neighborhood Legal Services, Farmworker Division, in Hartford, Connecticut; Mid-Hudson Legal Services Migrant Farmworker Project in New York; Puerto Rico Migrant Legal Services; and MLAP.

In 1978 the Corporation did not renew the grant for the Connecticut program, because a change in the hiring practices of growers in that area virtually eliminated the migrant population, leaving only seasonal farmworkers. The Ohio program was transferred to Advocates for Basic Legal Equality in FY 78. The only separate program providing direct service to migrant farmworkers was the Michigan Migrant Legal Assistance Program.

for them. The Department of Labor did not transfer the funds, and consequently the Legal Services Corporation included funds for the migrant programs and components in a supplemental budget request.

In late 1976, the Corporation commissioned a study (the Lillesand) to obtain a count of migrants for use in program funding for services to migrant farmworkers. This study was made for two reasons: First, the funding decisions made by OEO and continued by LSC were not based on numbers of migrants in a service area. Second, it was assumed that migrant farmworkers were severely undercounted in the 1970 census and the Corporation could not, therefore, use the census as a basis for allocation of funds to service migrants.

The Lillesand study utilized a number of existing data sources, including a survey to 600 public and private organizations serving migrants and several on-site visits, to estimate that 1,558,176 migrant farmworkers and their dependents were eligible for legal services. This figure reflected peak month migrant activity. Because the original "Lillesand" count did not adjust for duplication inherent in an estimate of migrant population taken during peak month activity, each state's estimate was revised to correct the duplication. As a result of the adjusted Lillesand count, funding for existing migrant programs was upgraded toward the \$7 per poor person service level, weighted to reflect the time migrants spent in the state.⁵ In order to implement this principle, states were grouped into three categories based on the length of the growing season: first, between 0 and five months; second, between six and eight months; and third, between 9 and 12 months.

In 1978, 14 new migrant components started operating. Existing programs in states with migrant populations of 10,000 or more (weighted for duration of presence), received \$70,000 minimum funding. In addition, the Corporation reserved \$129,879 for programs that agreed to serve regional coalitions of states with weighted counts of less than 10,000 migrants. Such coalitions were established in Maine, Vermont and New Hampshire; Minnesota and North Dakota; Delaware, Virginia and Maryland; West Texas and New Mexico. The new migrant components started in 1978 were established through: Pine Tree Legal Assistance in Maine; Western New York Rural Legal Services, a component of Monroe County Legal Assistance; Legal Aid Bureau in Maryland; Camden Regional Legal Services in New Jersey; Peninsula Legal Aid Center in Virginia; California Rural Legal Assistance; Legal Services Organization of Indiana; Southern Minnesota Legal Services; Georgia Legal Services; Legal Services of North Carolina; Southern New Mexico Legal Services; Idaho Legal Aid; Montana Legal

⁵Funds are allocated to each state not solely on the basis of population but also on the length of the growing season. This decision assumed that states with longer growing seasons would have a significantly greater demand for legal services.

Services; Oregon Legal Services Corporation; and Evergreen Legal Services of Washington State.

For states eligible for migrant expansion in FY 79, funding was divided into four groups: (1) states with total funding eligibility between \$1 and \$24,999; (2) states between \$25,000 and \$70,000; (3) states which received migrant funding previously and are eligible for up to \$150,000; and (4) states eligible for over \$150,000.

States in group (2) could apply to their regional offices for funding of a migrant component or program. However, such states had to reserve enough funds from non-migrant funds to establish a two-attorney unit solely devoted to serving migrants. Also, regional coalition could organize if the total adjusted number of migrants in coalition states exceeded 10,000. States in group (3) were to achieve full funding, and states in group (4) would receive funding for 88.9% of their weighted appointment.

The 1980s and 1990s

This system was put into effect for FY 79, 80 and 81. However, in 1981, the leaders at LSC decided that, in order to preserve migrant funding from a potentially hostile White House and its appointees, it would eliminate the small states pot and grant out the funds on a state basis to a grantee in each state (to the degree one was interested and available.) It took a number of years for all states to have earmarked funds, but sometime in the 1990s this result was achieved.

Also, beginning in 1986, the appropriations legislation began to have very specific line items for various LSC program components, including migrants, Native Americans, support, and the like. Prior to 1986, LSC appropriations did not have specific line items but provided only a general appropriation to LSC. The specifying of particular lines in the appropriation was done by a supportive Congress to prevent a hostile LSC Board and staff from eliminating these program components.

In the appropriation for FY 93, Congress directed the Corporation to distribute increases in migrant funding on a per migrant and dependent basis. Congress specified a national migrant population of 1,661,875, and directed that the percentage of that total to be found in each state was the percentage "determined by the 1992 Larson-Plascencia study of the Tomas Rivera Center migrant enumeration project" [hereafter referred to as the "Larson-Plascencia Study"]. The total count of 1,661,875 was obtained from the March 1990 Migrant Health Program "Atlas of State Profiles Which Estimate Number of Migrant and Seasonal Farmworkers and Members of Their Families"[hereafter referred to as the "Migrant Health Atlas"].

The Current Era

Then came the Republican Congress of 1995-1996, which, through the appropriations process, imposed restrictions on LSC programs, reduced overall LSC funding by 1/3, and eliminated the line items in the appropriations that protected migrant and other types of grantees (such as support centers).

Since FY 96, the appropriations legislation for LSC does not provide a separate funding line for migrants, nor does it provide for a protection of funding for migrant services against disproportionate reductions (as it did for Native Americans). Consequently, migrant funding under the appropriations legislation is limited in FY 2000 to funding the migrants who are included in the 1990 Census. And, based on 20 years of experience, the Corporation concluded that the quality, effectiveness and efficiency of services to migrants is substantially better when resources are concentrated in a single grant within each state rather than spread out in relatively small amounts among all the recipients in the state.

The appropriations legislation directs the Corporation to define geographic areas and make funds available within each geographic area on an equalized basis using the 1990 Census count. Within each geographic area, the Corporation can make one or more grants to provide needed services. In 1996 and subsequently, the Corporation identified each state as a geographic area and requested proposals to serve all migrants within each state geographic area. At the same time, the Corporation requested proposals to serve all non-migrants in a set of additional service areas within the state. Thus, the service areas put out for bids provided two complete layers covering the state's geography: one layer was for migrant services and the other layer was for all other services. Together, these two layers constitute the basic field services to all people identified under the 1990 Census as living below the poverty level.

Under the appropriations legislation, the Corporation must fund the 34,059,493 people living under the poverty level, within geographic areas, at an equal per capita level. The Migrant Health Atlas total of 1,661,875 included all migrants, some of whom were presumably above the poverty level or even above the legal services eligibility level of 125% of the poverty level. There is no data in either study on this question. For the purposes of funding LSC, in 1996, considered 70% of the number of migrants specified by Congress to be below the poverty level. Thus, 1,163,313 of the 34,059,493 people enumerated in the 1990 Census as living under the poverty level will be funded for migrant services. The distribution of this population among the state geographic areas remains the Larson-Plascencia Study.

LSC treated the poverty count in each basic field service area as if the share of migrants in the total stat census count is also the share within the basic field area. For example, the migrant count within California is 269,904. The total census poverty count for California is 3,627,585, so the migrant count with the census count is 7.4%. In each basic field service area, 7.4% of the census count in the service area was treated as migrants.

SECTION 1007(H) STUDY

The 1007(h) study required by the Congress in the 1977 Reauthorization Legislation focused on 7 client groups including migrants and seasonal farmworkers, Native Americans, people with limited English speaking abilities, veterans, rural populations, the elderly and the disabled. The first five groups were studied during 1977 and 1978, recommendations were approved by the LSC board in 1979 and a report to Congress completed in 1980. The elderly and disabled were reported on in 1981. This report provided a comprehensive review of these 7 groups and found that each group faced severe barriers to access and had special legal problems which required specialization to meet. The report reaffirmed the earmarking of national LSC funds for migrants and Native Americans but recommended against earmarking of funds for the other 5 groups studied.

The Basic Policy Issues paper for this conference describes the section 1007(h) study as it relates to migrants and the fundamental conclusion that there was a need for a specialized system of migrant projects in order to address both the access barriers and special legal problems of migrant farmworkers. However, it might be helpful to review, the actual recommendations from that study. As you can see, LSC did not specifically resolve the service responsibilities division between "migrant programs" and general programs. This was a deliberate decision made at the time because LSC was in the period of massive expansion which we assumed would go forward for some years and we did not want to prejudice how the delivery system would evolve as that expansion occurred.⁶

Actions and Recommendations of 1007(h) Study

(1) The current funding formula for migrant programs and components based on a weighted number of migrants in a service area will be continued as it is currently being implemented. Additional funds will be necessary in FY 80 to complete migrant expansion.

(2) A special task-oriented fund will be created to be held in trust for those states which fall below the \$25,000 minimum established by the FY 79 migrant funding approach. That fund will be made available to the legal services programs only in those designated states and used only for technical assistance, training, consultation and litigation expenses directly attributable to the service of migrants in those states. This fund will be administered by the Migrant Legal Action Program and established out of FY 79 expansion funds. Continuation of this fund will be dependent on increased appropriations.

⁶Of course, that expansion came to a halt in 1981 with the election of President Reagan.

(3) The Regional Offices, in their FY 79 monitoring of migrant components and those general programs with migrants in their service areas, will inform the programs that the non-farmworker status-related problems of the seasonal farmworkers should not be excluded from consideration in local program priority setting. Implementation will not require additional funds.

(4) To provide more effective representation to farmworkers who do not remain in one place, the Corporation will assist the migrant components and the Migrant Legal Action Program to develop a more effective communication and coordination network linking "stream" and "base" state programs. If available, funds will be set aside for periodic meetings of farmworker staff from "base" and "stream" states and to experiment with the use of WATS lines between "base" and "stream" states. Additional funds will be required to fully implement this recommendation.

(5) To alleviate the physical barriers of access to legal services faced by migrants residing in labor camps, the Corporation recommends that Congress enact legislation to ensure legal services staff have access to migrant camps in which eligible clients reside.

(6) In the section on persons with limited English-speaking ability, the Corporation recommends increased recruitment efforts to induce bilingual staff into programs and a small resource commitment to experiment with language instruction. Those recommendations are also incorporated in this section as means of assuring a significant number of bilingual staff for migrant components. However, special emphasis will be placed by the LSC recruitment unit on assistant migrant programs in obtaining bilingual staff with litigation experience.

(7) Also, as indicated in the section on persons with limited English-speaking ability, the Corporation will increase the support, training, research and material development on immigration and other problems of non-citizens.

(8) The Office of Program Support⁷ will provide, or fund others to provide, migrant attorneys and paralegals with training on migrant farmworker problems and develop a manual on farmworker representation. Implementation will be accomplished within current budget allocations.

⁷At the time of the study, LSC included a major division, the Office of Program Support, which provided training, manuals and technical assistance to the legal services community. The division was eliminated in 1981 and the functions of training, manual production and technical assistance were devolved to a variety of national and regional grantees.

(9) If the recruitment office operates a summer law student program, special emphasis should be placed on targeting some of the students to work in "stream" state migrant offices and to assist in outreach and advocacy for migrants during the peak harvest seasons.

FUNDAMENTAL ISSUES

At the outset, we need to consider four fundamental issues that directly affect Migrant delivery and require immediate and long-term attention.

A. SUPPORT AND TRAINING

We must rebuild and revitalize the support and training infrastructure for Migrant programs, components and advocates.

The Migrant delivery system has historically had access to support services, information dissemination through the Field Memo and others communications, co-counseling, training, manual preparation and national advocacy undertaken by the Migrant Legal Action Program (MLAP) and with regard to some functions by the Farmworkers Justice Fund (FJF). Other national entities and, in a few instances, state support programs also provided support and assistance to Migrant advocates. The elimination of LSC funding for support in 1995 has caused the reduction in the availability of critical support assistance for Migrant advocates. With some funding available after the loss of LSC funds, MLAP was able to continue some of its previous activities. Moreover, in most of the states where there are large number of Migrants and programs and units funded for Migrants, the state support system has not recovered from the 1995 funding termination.

It is critical for the Migrant delivery system to fund and rebuild its national support structure. It must take advantage of technology and the possibilities technology provides for support and training. Equally important, Migrant programs and advocates must work with others within the state planning process to make sure that state efforts to rebuild state support include the needs of Migrant advocates. Both this national system and the state systems in states with a recognizable number of Migrants need to ensure the following:

1. Information dissemination

A critical role of support efforts involves information dissemination. The Migrant support system must ensure effective monitoring, analysis and timely distribution of information regarding relevant national and state legal developments to individual and institutional providers and others participating in the Migrant delivery system.

The Migrant support system must also create and maintain an efficient state-of-the-art information dissemination network which includes at least four elements. First is e-mail access for institutional providers of civil legal assistance, such as legal services programs, pro bono programs, law school clinical and related programs, specialized legal advocacy programs and staff working on Migrant issues in community-based organizations. Second is a civil legal assistance web site and other methods of communication to provide up-to-date information about legislative, regulatory and policy developments affecting low-income Migrants as well as other information relevant to the delivery of civil legal assistance to Migrants.⁸ Third, Migrant providers must have access to an electronic library of briefs, forms, best practices and proprietary texts and client information materials, which are accessible by all institutional providers and private attorneys providing civil legal assistance to Migrants. Fourth, Migrant providers must have access to a coordinated research capacity integrating Internet usage, on-line services, proprietary sources, and other resources.

In addition, Migrant programs, in conjunction with MLAP/FJF, should convene regular meetings of, or communications among, attorneys, paralegals, lay advocates and others working on Migrant legal issues to discuss common issues, problems, subject areas, client constituencies, techniques of advocacy and strategies to make the most effective and efficient use of resources.

2. Coordinated education and training activities

Education and training activities must be available for all individual and institutional providers of civil legal assistance to Migrants to develop expertise in all major areas of legal services practice affecting Migrants, to update advocates on new developments and emerging trends in law and policy affecting Migrants, to ensure the use of new strategies, tools, skills and techniques of advocacy, to develop managers and new leaders, and to maximize opportunities for professional staff development for all experience levels of staff.

TRLA has sponsored several recent conferences with an emphasis on employment issues. MLAP continues to provide some regional training upon request. However, training activities need to be carried out both at the workplace and outside of the workplace for maximum efficiency and effectiveness. State support entities and MLAP/FJF must also provide assistance to local providers to ensure development of appropriate local training and education activities and materials. Migrant providers and MLAP/FJF should coordinate with continuing legal education programs offered by state

⁸I assume that MLAP or FJF is the appropriate home of such a web site, although one of the Migrant programs could also house such a web site. If necessary, the Project for the Future of Equal Justice web site could create a Migrant section to provide a temporary home.

or local bar associations or other entities. Finally, all Migrant providers must provide opportunities for staff to participate in national and regional training and collaborations where relevant to civil legal assistance activities for Migrants. One example would be the development of a Migrant training track at the NLADA Substantive Law Conference for the summer of 2000.

3. Coordinated civil legal assistance liaison

Migrant providers should collaborate with other civil legal assistance providers within the state and nationally to coordinate civil legal assistance liaison with all major institutions affecting or serving low-income people in legal matters, including state, local and federal courts; administrative agencies; legislative bodies; alternative dispute resolution bodies; and other public or private entities providing legal information, advice or representation.

4. Coordinated national and statewide research

Finally, the Migrant civil legal assistance system must ensure both substantive and delivery research is systematically undertaken. Delivery research should focus on improving the delivery of civil legal assistance to Migrants. As part of these efforts, Migrant programs also need to identify and promote systemic "best practices" in areas such as outreach, community legal education, intake, priority-setting and needs assessment, case management, techniques of advocacy and strategy development. In addition, Migrant programs and MLAP/FJF should undertake research on relevant demographic trends and new and emerging legal problems that affect low-income Migrants.

5. How to Get There

To rebuild and revitalize the migrant support system will require new funding both from new sources as well as from within the existing Migrant delivery system. MLAP/FJF will need to seek out funding where there are possibilities. But there may well be very limited possibilities for earmarked funding for support and training. Therefore, Migrant programs and components will have responsibilities to help raise the necessary funding. It is not likely that funding sources will provide separate funding for support and training. LSC is not likely to be a funding source, because Congress will not fund for support and training. Instead, support and training will come from programs receiving funding for legal assistance. In short, we are in a new era for support within the LSC system.

Funding support and training is not just the responsibility of Migrant programs and components, though it must begin there. The national leadership in legal services and the national institutions—NLADA and CLASP—have responsibilities to work to see

that the Migrant support and training infrastructure is rebuilt. A Migrant track at the NLADA Substantive Law Conference is one example, but only one example of what needs to be done.

Finally, Migrant programs cannot totally ignore newly emerging state advocacy groups or state support entities that remain after the LSC funding termination of state support. While state support and state level training may not be able to fully meet the needs of Migrant advocates, much more can be done than is currently the case. Some state support entities have in the past developed some expertise on Migrant issues and have included Migrant issues in some training programs. As a beginning step, it might make sense to include several key state support and state advocacy group advocates from states with large Migrant populations in any training that MLAP/FJF undertakes.

B. FUNDING DIVERSIFICATION

Improvements in the Migrant delivery system and support will not come about unless there is increased funding. It is essential to seek ways to obtain increased LSC funds to address both funding inequities and to expand capacities of all Migrant providers. However, it would be foolish to assume that any new funding can only come from LSC and that there will soon be sufficient change in the political environment in Washington to produce sizeable increases in LSC funding. Of course, within the limits of the appropriations restrictions, we should continue the efforts to increase LSC funding from Congress. The history of LSC funding since 1981 when LSC achieved its highest relative level of funding is not promising,⁹ and the current political climate does not appear to be changing significantly enough that we can anticipate anything other than small, incremental funding increases over the next several years.

Even if the prospects for increased LSC funding improve and more LSC funds are available for Migrant delivery, they will not be sufficient to take even the minimal steps necessary to address the access barriers and special legal problems of Migrants nor will they be sufficient to put in the place the system described below. Therefore, it is essential for Migrant programs to seek funding from a diverse set of sources including, but not limited to: federal, state and local governments, private foundations, United Way campaigns, line items in collaborations with human services agencies, and a host of other sources. Moreover, increase funding will also require direct participation by Migrant programs and components in the state resource development

⁹LSC funding increased substantially from \$71.5 million in 1975 to \$321 million in 1981. Had funding continued at just the inflation level, LSC funding would be over \$700 million today. Instead, LSC funding was reduced in 1982 to \$250 million and did not again reach \$321 until 1991. It rose to \$400 million in 1995, but was reduced again to \$278 in 96 and is only back to \$305 million today. Taking into account inflation, LSC funding has fallen over 50% in real money since 1981.

plans being developed in many states through the state planning process. Although it is difficult and will require learning new skills, it is the responsibility of every Migrant program director and manager to seek to diversify funding for Migrant delivery.

Finally, there is some evidence from experience in a number of states that have succeeded in obtaining increased funding, that funding follows delivery improvements, not the other way around. While this evidence is not conclusive, few recent successful state efforts have been premised on the assumption of funding "more of the same." Funders are looking to fund new and innovative approaches, not the same old approaches (even if the old approaches are working.) This includes both governmental and private funders. If so, it is not a sufficient answer to the challenges that face the Migrant delivery system to assert that without additional funding, changes cannot be made. Instead, the Migrant delivery system and the programs that are funded as part of that system, have to begin making changes and to propose additional changes in the way they operate, in order to attract increased funding.

C. PARTICIPATION IN THE STATE PLANNING PROCESS AND THE EFFORTS TO ACHIEVE AN INTEGRATED, COMPREHENSIVE STATE SYSTEM OF CIVIL LEGAL ASSISTANCE

The framework for funding and delivery for civil legal assistance has fundamentally changed since we last grappled with how to promote excellence in Migrant civil providers. The civil legal assistance system is primarily state based and its growth and future directions will be determined on a state-by-state basis. There are many more stakeholders now involved in civil legal assistance and a much broader community of advocates. The current and future system is not primarily an LSC system because there are many non-LSC full-service providers and specialized programs. LSC is no longer the primary funder of civil legal assistance, although it remains the single largest funding source. Funding is far more diverse and far more state based than 15 or 20 years ago and significant growth in funding will be occurring at the state and local level, not primarily at the federal level. In order to secure future funding for civil legal assistance, LSC, NLADA/CLASP and most of the civil legal assistance community have recognized that it is essential that we create a comprehensive, integrated delivery system in each state which will include providers of civil legal assistance to Migrants.

Migrant programs and the Migrant community cannot ignore the state planning initiatives and other actions being taken to develop comprehensive, integrated state delivery systems. While in the past there may have been good reasons to retain separate funding and delivery systems, and while there are legitimate fears of state government involvement in Migrant legal services delivery, Migrant programs will lose an opportunity if they do not participate. Only by direct and effective participation can Migrant programs influence the new system to take into account the critical needs of

Migrants both on reservations and in urban areas. Moreover, to access vital new funding that is emerging and will continue to emerge will require participation. It is essential for Migrant programs to reach out to the broader civil legal assistance community while, at the same time, continuing to focus on efforts to improve legal assistance for Migrants.

D. ENGAGEMENT WITH CLIENTS AND THEIR COMMUNITIES

Those involved in civil legal assistance for Migrants must be in constant touch and dialogue with the low-income Migrants and families in communities so that providers understand the values, concerns, needs and problems of low-income Migrants including what they know about existing or potential legal problems they may face and how they are reacting to changes directly affecting their lives. Such client engagement may require changes in how the Migrant programs operate.¹⁰ Migrant programs may be more effective in engaging clients than most civil legal assistance providers because of the historical need for such programs to relate directly to Migrant leaders and because many Migrant advocates have had to travel long distances in order to effectively work in their programs. Because of the critical importance of client engagement to Migrant advocacy, I will set out what I believe are necessary indicators of client engagement which I hope are being already met in most programs.

First, Migrant provider staff will have to view their work as encompassing client engagement. Their job will include community meetings and interaction with clients in labor camps and community settings as well as increased outreach efforts to communicate with low-income Migrants in a variety of settings, such migrant service providers, churches, hospitals, and a host of other settings. This client and community orientation to their work, to be effective, will need to be written into job descriptions and used as a basis for evaluation, salary increases and job promotion.

Second, some Migrant providers may have to expand the places where intake is done, as well as utilize a wider range of intake techniques, including telephone intake and hotlines (discussed below).

Third, Migrant providers, including general programs in areas where there are large numbers of Migrants, must be sensitive to the values, cultures and aspirations of

¹⁰Client engagement is not the same as "client involvement" as legal services have traditionally used that term. Client involvement works well when there are strong, viable client groups that represent broad constituencies and when client representatives are themselves involved in leading social change. Unfortunately, that is not the case today in many communities. Thus, without giving up the historic and value-laden strong commitment to client involvement, legal services must focus on client engagement—an active, outreach effort that involves community lawyering and the development of options and opportunities for clients.

Migrant households. To assume effective communication and responsiveness will require diverse staffing patterns within and among providers and the use of community volunteers or lay advocates. When there are a large number of Migrant households that speak a language other than English, providers must ensure that there are advocates and interpreters who can speak the language of the clients.

THE FRAMEWORK FOR DEVELOPING INDICATORS OF EXCELLENCE FOR CIVIL LEGAL ASSISTANCE TO MIGRANTS

A. GENERAL WORK ON EXCELLENCE IN CIVIL LEGAL ASSISTANCE

Migrant advocates can learn from the more general thinking about excellence and quality in the delivery of civil legal assistance that had been the subject of several efforts over the last ten years. The challenge is to apply the more general work on civil legal assistance to the unique problems in the delivery of civil legal assistance to Migrants.

There are two critical areas of work that we need to draw upon. First, as you have already recognized, is the LSC Performance Measures developed by an LSC Advisory Group as part of the Comparative Demonstration Project conducted by LSC in 1993. These have been refined since the initial efforts and are now part of the LSC Refunding application.

You have developed a specific set of performance measures for Migrant programs in your paper on ***Standards for Migrant Farmworker Program***. Your unique indicators of excellence appear to take into account both the severe access difficulties (including physical access barriers as well as ethnic and cultural barriers, complex language barriers and others) and the huge array of special legal problems unique to Migrants.

The second involves the thinking about comprehensive, statewide, integrated delivery systems. LSC has done considerable thinking in its two programs letters, 98-1 and 98-6. It has further refined that thinking in subsequent communications providing feedback on the state plans that were submitted in October of 1998. In addition, the Project for the Future of Equal Justice prepared a document ***The Discussion Draft*** which attempted to set out the objectives for and characteristics of a comprehensive, integrated statewide system for the provision of civil legal assistance to low-income persons to achieve equal justice for all.¹¹

¹¹I was the primary author of the Discussion Draft, though I had substantial assistance and input from staff of the Project For the Future of Equal Justice and numerous leaders from the civil legal assistance community.

However, some caution is necessary in using either of these as the framework from which to work. The LSC Performance measures were developed to evaluate LSC-funded programs through a peer review process. The process was just beginning in a systematic way in 1994 and 1995 when Congress fundamentally altered the role of LSC in evaluating performance by depriving them of funds to undertake such evaluations except in the context of competitive bidding. Therefore, we do not have sufficient experience or data to know whether the measures provide a useful basis for evaluating program quality and excellence.

The LSC Program Letters and the Discussion Draft characteristics were designed to focus on the state as a primary framework for viewing civil legal assistance, but they did not intend to provide a comprehensive framework for the entire civil legal assistance delivery system and did not focus specifically on the unique needs and problems of providers to migrant farmworkers.

C. THREE APPROACHES TO EXCELLENCE

1. Individual Program Indicators of Excellence

The emphasis of the LSC Performance Measures was on individual program performance and the evaluations to be conducted were of individual program effectiveness. The Performance Measures set out four basic areas for inquiry by peers who would evaluate legal services programs:

1. Effectiveness in identifying and targeting resources on the most pressing needs of the low-income community.
2. Effectiveness in engaging and serving the client community.
3. Effectiveness of legal representation and other program activities intended to benefit the low-income population in its service area. This measure explicitly incorporated the ***ABA Standards for Providers of Civil Legal Services to the Poor***.
4. Effectiveness of administration and governance.

The concept of "effectiveness" is the cornerstone of the criteria. Effectiveness encompasses an emphasis on both (1) results achieved for clients and the client community and on (2) cost-efficiency, meaning that given a program's goals and objectives, the program achieves the maximum possible in the most economic manner.

One task for Migrant delivery is to complete your work adapting the framework of the Performance Measures and modifying and adjusting them to produce a system of indicators for excellent of Migrant civil legal assistance providers.

A second necessary task is to undertake peer review of Migrant programs and program components. Migrant programs will need to undertake their own peer review process because there is not likely to be new or nationally earmarked funding for peer review and because neither LSC nor IOLTA may undertake evaluations of program quality.

Finally, all Migrant providers should also consider periodic efforts to evaluate their services and staff performance through structured client efforts. It may be possible to use client satisfaction surveys in some Migrant service areas, although such surveys may not be efficient and effective for many Migrant services areas. In addition, Migrant programs should consider other approaches. For example, a few legal services programs have successfully convened focus groups of clients to assess services and provide information on clients' needs and perceptions.¹² Migrant providers should experiment with such techniques as well.

2. State Integrated Comprehensive Systems of Delivery

Over the last four years, the approach to thinking about legal services delivery has fundamentally changed. The emphasis is now on the entire system of legal services delivery, particularly at the state level. While a statewide emphasis does not fit perfectly for Migrant programs, it does provide one framework for looking at civil legal assistance. Thus, we need to examine Migrant programs and components in the context of newly emerging comprehensive, integrated state delivery systems. A beginning for such an examination is sketched out in the next several sections of this paper.

3. The National Network of Migrant Programs

Finally, we need to consider indicators of excellence from the perspective of the national network of Migrant programs and components funded by LSC with earmarked funding. While there will be significant overlap with both individual program indicators of excellence and the state integrated delivery systems issues, there are unique issues

¹²An excellent example of how focus groups can be used and the impact such efforts can have is provided in two articles by James Bamberger and Sally Pritchard, *Challenging Institutional Relevance—Part I* MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. VII, No. 3, October 1993 and *Challenging Institutional Relevancy—Part II*, MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. VIII No. (November 1994).

that face Migrant programs because of the access difficulties of migrant farmworkers and the unique legal problems they face. In fact, examining the unique aspects of Migrant delivery should help inform both the discussion about individual program indicators of excellence and the state integrated system's indicators.

OBJECTIVES OF MIGRANT CIVIL LEGAL ASSISTANCE SYSTEM

At the outset, we need to be clear about the objectives for a Migrant civil legal assistance system. We need to reach consensus on what these objectives are for they will provide the ultimate indicators of whether the system is moving toward excellence.

The fundamental purpose of a Migrant civil legal assistance system is to enable low-income¹³ Migrants to address their legal problems effectively.¹⁴ To achieve this purpose, the system must carry out three functions:

First, the system must educate and inform low-income Migrants of their legal rights and responsibilities. Many Migrants do not recognize that they are in a situation that could be improved with legal assistance. Many Migrants are unaware of the use of civil legal assistance and many have only a limited understanding of the justice system and its components. The civil legal assistance system should educate and inform Migrants to enable them to:

- recognize their legal rights and responsibilities¹⁵ and unmet legal needs;
- address their legal needs effectively;
- take action to prevent legal problems from arising; and

¹³ I have used the term "low-income" without attempting in any way to delineate who is and is not included among the Migrant population. The current funding approach used by LSC assumes that 70% of the migrant count is below the poverty line.

¹⁴ The term "legal needs" refers to situations that low-income Migrants face that raise legal issues and for which legal information, advice, representation and assistance would be helpful. The term "unmet legal needs" is defined to mean legal needs for which low-income Migrants did nothing or were dissatisfied with the outcome of their own efforts or those of non-legal third parties.

¹⁵ The phrase "legal rights and responsibilities" is taken from the Legal Services Corporation Act as amended. "Legal rights" will be used in this paper to mean the rights accorded to low-income Migrants through statutes, regulations, constitutions and judicial decisions. "Responsibilities" will mean obligations imposed on low-income Migrants by statutes, regulations, constitutions and judicial decisions.

- promote their legal interests.¹⁶

Second, the civil legal assistance system for Migrants must inform Migrants about options and services available to solve their legal problems, protect their legal rights and promote their legal interests. Even when low-income Migrants recognize that they have a legal need and are aware of their legal rights and responsibilities, many will not be aware of all possible methods for addressing their legal needs. Some options involve preventive steps, self-help and collective actions that do not involve the formal use of the civil justice system. Other options involve using alternative dispute resolution, negotiation and the judicial and administrative adjudicatory systems. Still other options include community economic development, other transactional assistance and representation before administrative agencies and legislative bodies as well as international human rights and trade bodies. Low-income Migrants need to be aware of the range of options available and the pros and cons of exercising particular options so that they can choose the option that best meets their needs. Low-income Migrants also need to know about all available legal assistance providers and how to access or make use of those providers.

Third, the civil legal assistance system must ensure that all low-income Migrants have relatively equal and meaningful access to a full range of high-quality legal assistance programs when they have chosen options that require legal aid and assistance. Such assistance can help low-income Migrants anticipate and prevent legal problems from arising, solve their legal problems and protect their legal rights. Such assistance can also help promote their legal interests, oppose laws, regulations, policies and practices that operate unfairly against them, enforce and reform laws before legal problems arise, and improve their opportunities and quality of life.

THE UNIQUE CIRCUMSTANCES OF MIGRANT DELIVERY AND ADVOCACY CRITICAL FACTORS TO TAKE INTO ACCOUNT

As both the 1007(h) study and *Basic Policy Issues For Migrant Legal Services* documents, there are a number of severe barriers which restrict migrant farm workers' access to legal services such as:

- Isolation in remote location
- Inability to travel to regular legal services offices
- Unavailability during regular business hours

¹⁶"Legal interests" is used in this paper to mean procedural protections, rights or entitlements that are not recognized as legal rights by statutes, regulations, constitutions or judicial decisions.

- Cultural isolation such as language, race, national origin and ethnicity
- Lack of familiarity with the local area, agencies and resources
- Dependence on employers and vulnerability to retaliation and intimidation
- Discomfort asserting claims during the work season or away from the security of home
- Lack of knowledge of legal rights, distrust of the legal system and resignation to injustice
- Mobility and transience of migrants
- The advocate's anxieties about controversy and hostile reactions from opponents

In addition, migrant farm workers have a large number of specialized legal needs which may not be easily addressed by general legal services programs or the private bar. See pages 7 and 8 of ***Basic Policy Issues***. Moreover, migrant farm workers cases often present factual circumstances which are unique to general legal services practice. In order to provide effective and efficient legal services to migrant clients, providers also have to utilize what the paper describes as "specialized client service skills, unique approaches to the delivery of legal assistance and representation techniques specially adapted to meet the needs of migrant clients." ***Basic Policy Issues*** p.10.

The paper also demonstrates the need for legal assistance both at the work site and at the home state (or country, i.e. Mexico) as well as the need for a system that integrates the two points of delivery. And the paper highlights the complexities and high costs of effective integration for a truly effective and efficient migrant delivery system.

The fundamental task of this conference and of future working groups is to address these complex delivery issues both in the context of a comprehensive, integrated and statewide delivery system and in the context of a coordinated, national delivery system.

THE FUNDAMENTAL DELIVERY SYSTEM ISSUES

This paper began with a discussion about the need for the civil legal assistance delivery system for Migrants to (1) rebuild and revitalize support and training; (2) diversity funding; (3) effectively participate in the state planning process and become an integral part of the newly emerging comprehensive, integrated state delivery systems; and (4) engage clients and Migrant communities to address their priority legal needs. In addition, the delivery system must:

- Increase awareness of rights, options and services
- Facilitate and enhance access to legal assistance

- Provide a full range of services
- Provide effective tribal representation
- Utilize a full range of providers
- Ensure high quality, coordinate, efficient and effective civil legal assistance
- Use technology to the maximum extent possible

A. INCREASING AWARENESS OF RIGHTS, OPTIONS AND SERVICES

The Migrant civil legal assistance system must engage in outreach and community legal education in order to educate and inform low-income Migrants of their legal rights and responsibilities and the options and services available to solve their legal problems, protect their legal rights and promote their legal interests.

1. Outreach

Throughout the service area of Migrant programs or units and in states where there are identifiable numbers of Migrants, the delivery system must ensure that there is an aggressive, coordinated, systematic and comprehensive outreach targeted to all Migrants. Such outreach should provide information about legal rights and responsibilities of Migrants as well as the options and services available from legal providers and their partners. Given the severe access barriers which Migrants face, it will be very challenging to ensure that Migrants are reached. There is no doubt that, over time, technology will be available to some if not many Migrants and will be able to provide access and help address the access barriers, but, until then, more traditional methods of outreach will have to be used.

2. Community Legal Education

In addition, Migrant programs and the state integrated system must provide coordinated, systematic and comprehensive community legal education that is targeted at critical legal issues, provided through a variety of means and delivered in a variety of community and workplace settings. Educating low-income Migrants about their legal rights and changes in laws and policies that directly affect them can help potential clients understand their options and responsibilities, prevent future legal difficulties from arising and enable low-income Migrants to seek legal assistance at a time when it can be most valuable. In states without Migrant programs or units and where there are identifiable number of Migrants, care should be taken to make sure that the education and information is culturally relevant to the Migrant population groups within the service area.

Migrant providers as well as the state system must also educate and train staff of community-based organizations, human services providers, court personnel and others

involved in providing legal and other services about critical legal issues facing low-income Migrants and about the services available from legal providers in order to make appropriate and accurate referrals.

B. FACILITATE AND ENHANCE ACCESS TO LEGAL ASSISTANCE

In addition to the severe access barriers that migrant farm workers face in obtaining legal assistance, there is little doubt that Migrants would have the level of unmet legal need experienced by other segments of the population or worse. Virtually every legal needs study that has been done over the last ten years tells us that the current system is meeting at most 20% of the legal needs of the general population legal services are supposed to be serving. We can assume that Migrant programs are not doing better. Yet, the civil legal assistance system for Migrants has not made a commitment to achieve full access to civil legal assistance for all Migrants. To do so will involve increased financial resources to be sure. But, as the recent policy report from ABA's Comprehensive Legal Needs Study suggests, achieving access will require new methods of delivery.¹⁷

A plan to achieve access based on what we know about addressing the legal needs of low-income Migrants would probably include four fundamental elements.

1. Coordinated system of service delivery using all individual and institutional providers

The key to achieving relatively equal access for Migrants is the development of, or redeployment of existing providers into, a coordinated system of service providers which uses both specialized Migrant providers and general civil providers together with private lawyers and lay advocates in order to ensure that services are accessible from all parts of the service area, including remote rural areas and, where relevant, low-income urban neighborhoods. The system must identify and allocate resources and

¹⁷See AGENDA FOR ACCESS: THE AMERICAN PEOPLE AND CIVIL JUSTICE, by Albert H. Cantril, American Bar Association, 1996. The Policy Report calls for: (1) increasing the flexibility of the civil justice system and expanding the options available for people seeking legal help, including hot lines and assistance to those proceeding pro se; (2) developing better ways for people to obtain information about their options when facing a legal situation and more effective referral systems including more legal education through pamphlets, kiosks and other new technologies; (3) increasing pro bono legal services by the private bar; (4) increasing the availability of affordable legal services to moderate-income individuals and households through sliding fees and expansion of legal services programs; (5) integrating the use of community-based dispute resolution services into the options available for low-income clients; and (6) encouraging legal services programs to retain as much flexibility as possible in deciding what cases to accept.

make available specialized expertise in all major substantive areas of the law affecting low-income Migrants in order to provide an appropriate service for every major legal problem and address the highest priority legal needs of low-income Migrants within the state. In addition, the coordinated system must provide legal information and assistance in all of the languages spoken by Migrants.

2. Centralized or coordinated advice and brief services system

Second, the system of both specialized and general providers must develop both where migrants work and reside advice and brief services systems to enable low-income Migrants who believe they have a legal problem to speak by telephone or in person to a skilled attorney or paralegal for accurate legal advice and brief services to help resolve that problem.

Since both specialized and general legal services providers assist some Migrant clients through brief service or advice, it is important to focus on three issues: (1) how to do this work more efficiently and effectively; (2) how to integrate these activities into the overall state system so that effective advice and quality brief service is seen as central to the work of most Migrant programs and to most state systems where there are identifiable number of Migrants; and (3) how to create a multi-state system that involves both stream and base state providers.

However, it is also important to recognize the limits of using phone contact and new technologies and the potential costs as well as benefits. Improved brief service and advice systems cannot alone fully identify the most critical issues facing Migrants, but they can provide some insight and information about them. Using new technologies to enhance contact and assistance to Migrants must be developed in the context of maintaining and improving lawyer-client relationships, not supplanting them. Providing Migrants greater information about their rights and responsibilities and giving them information to enable them to understand their situation and take action can be empowering, but it is not the primary means of empowering clients that programs must develop. It is one of many strategies that must be employed.

3. Accessible, flexible, responsive intake systems

To facilitate and enhance access, Migrant programs must insure that, throughout the service area, there is an accessible, flexible and responsive intake system or systems which include in-person and telephone screening, case evaluation and referral system(s). These systems must be able to effectively diagnose legal problems and identify legal interests to determine the level of service that each applicant needs. They also must have the capacity to make referral to the system of legal providers including pro bono advice and referral panels and law school clinics.

They also should be able to make referral to tribal institutions and community based organizations and other appropriate non-legal organizations accessible by Migrants.

4. Participation in the state civil legal assistance system

Migrants should have access to advice and brief services system and statewide intake systems. However, such systems should not supplant client sensitive intake and advice and brief referral systems for those Migrants who cannot or do not want to navigate such a system. Such combined systems not only provide critical services that could be used by some Migrants now accessing the current system, but they offer clients who need a fuller range of legal advice and/or representation easy access to such legal assistance. In addition, such statewide systems also can serve as a clearinghouse of information for staff, low-income Migrants, pro bono programs, law school clinics and other providers and partners.

C. PROVIDE A FULL RANGE OF SERVICES TO INDIVIDUAL MIGRANTS

The Migrant civil legal assistance delivery system, working in conjunction with the newly emerging integrated state systems, should systematically ensure the collective capacity to provide a full range of civil legal assistance services to all Migrant clients regardless of their location or the forum within which their legal problem is best resolved. For example, the system should enable low-income Migrants and groups to address some legal problems without legal representation, receive advice and brief services in appropriate situations, and receive representation from an attorney or paralegal when necessary. In addition, the system should provide representation when the legal issues affect a substantial number of poor people. Services that should be available include:

- Legal advice and referral;
- Brief legal services;
- Representation in negotiation;
- Representation in the judicial system and in administrative adjudicatory processes using all forms of representation appropriate for the individual or group being represented;
- Transactional assistance (including community economic development, job creation, housing development, and the like);
- Representation before state, local, federal and even international legislative, administrative and other governmental or private bodies that make law or policies affecting legal rights and responsibilities;
- Assistance to clients using mediation and dispute resolution programs, including community-based and dispute resolution services (where they exist), and development of linkages with such programs; and,

- Assistance to individuals representing themselves pro se.

1. Continued Sustained Representation

While it is imperative that the Migrant civil legal assistance system serve more clients through a vastly expanded range of services and a much wider range of partners, it remains the case that legal services must continue to provide high-quality, effective representation in the trial courts, including tribal courts, and administrative agencies. Only by sustained, continuing representation will low-income Migrants realize their rights. This representation must include all of the techniques of advocacy that lawyers can pursue on behalf of clients including, for example, class actions and claiming attorneys' fees for which clients are entitled.

2. Representation before Legislative and Administrative Bodies

The Migrant civil legal assistance system must provide representation before legislative and administrative bodies and other bodies that make law or policies affecting low-income Migrants to make sure that low-income Migrants are at the table when decisions affecting them are made. These bodies make many decisions directly affecting the rights and interests of low-income Migrants and they are an integral part of the civil justice system. If such representation cannot be provided by non-LSC-funded programs or other institutional providers, (because of funding restrictions imposed to address the ideological opposition of some legal services supporters), the Migrant system must find ways to provide this vital service. The Migrant system has access to FJF which does provide some representation before Congress and federal agencies.. Another approach, that has not been tapped very often by legal services programs generally, and probably not by Migrant programs, is the private bar, particularly large law firms. In a number of states and nationally, the private bar has been able to provide such policy representation pro bono. MLAP has developed some pro bono referral mechanisms which should be utilized more fully.

3. Transactional and Economic Development Work

There is also a growing recognition that legal services programs, working with private lawyers, should provide assistance to community-based organizations and development corporations engaged in venture development and community building activities in areas where Migrants reside. Economic development assistance can help develop housing, nonprofit development projects, and small business ventures and can

help initiate and operate social services ventures through community-based organizations such as job training, credit unions, home health care and child care.¹⁸

D. UTILIZE A FULL RANGE OF PROVIDERS

Civil legal assistance for Migrants will continue to be delivered by staff attorneys, paralegals and lay advocates. However, if the delivery system is going to reach a larger number of Migrants, then civil legal assistance will have to increasingly involve private attorneys, law students working in clinical and other programs, staff from other community-based organizations, lawyers, paralegals or staff working for other entities (including attorney general offices, corporations, labor unions, civil rights and civil liberties organizations, human services providers and other nonprofit institutions), nonlawyers and lay advocates, and others involved in or relating to the civil justice system such as clerks, law librarians and other court personnel. These must all work as a community of advocates.

1. Private Lawyers

In order to achieve access and to meet basic Migrant client needs, Migrant programs and components will have to form creative partnerships, collaborate with and effectively utilize the private bar. Yet, unlike civil liberties and civil rights organizations, in only a few places does the organized civil legal assistance system take full advantage of private attorneys and their skills.¹⁹

To help meet the challenges of the unmet legal need for Migrants, and to participate in a coordinated, holistic approach to addressing the legal needs of low-income Migrant clients, pro bono programs and coordinators must expand beyond their traditional role of tapping individual attorneys for a particular case and engage in one or more of the following activities:

Undertake complex litigation. There are many cases with solid legal position which LSC-funded legal services programs cannot take on either because the cases involve prohibited activities which cannot be undertaken unless there are sufficient tribal

¹⁸John Little and National Economic Development and Law Center, *Practicing Community corporate Law*, 23 CLEARINGHOUSE REVIEW 889 (November 1989); Debbie Chang and Brad Castel, *Creating Opportunities through Litigation: Community Economic Development Remedies*, 26 CLEARINGHOUSE REVIEW 1057 (January 1, 1993).

¹⁹For example, the ACLU relies extensively on private attorneys for a significant amount of major civil liberties litigation. Likewise, the Lawyers Committee for Civil Rights Under Law and the NAACP Legal Defense Fund utilize a large group of private lawyers and law firms to handle major civil rights litigation.

funds or because the cases require resources that legal services programs do not have.

Represent individual Migrant clients. Migrant civil legal assistance providers can form partnerships with private law firms and pro bono programs to augment the representation of clients who need assistance. This is not the same as referring clients to a pro bono lawyer. Instead, what is contemplated is for a law firm or pro bono program to take on a whole category of cases or a set of legal problems. For example, the American Bar Association created the Children in SSI Project which has mobilized the private bar in virtually every State to prepare volunteer attorneys to represent affected families with many law firms on behalf of parents of severely disabled children denied SSI by the changes in the SSI program.²⁰ To do so effectively, the participating law firm attorneys and paralegals would have to be trained in the Migrant legal issues they are undertaking and provided support and technical assistance, just as was done in the SSI Project. This is not impossible to do, even though the Migrant law is specialized and unique. Law firms can also take on a series of specific types of cases as co-counsel with a Migrant program, and take advantage of the program's expertise.

Train and mentor legal assistance staff lawyers and paralegals. Many legal assistance staff, and I assume this applies to Migrant program staff, are not experienced in advocacy focused on persuasive factual presentations and may lack basic trial advocacy skills and need training on such skills which private firms can do. For example, a private firm could include Migrant staff in its own training programs or participate in private firm exchanges with the staff provider.

Undertake critical lobbying and policy advocacy before legislative and administrative rulemaking bodies. Private lawyers can engage in a range of activities related to such policy advocacy including tracking and monitoring legislation and regulations, undertaking analyses of existing or proposed legislation or regulations, drafting legislation or amendments or regulatory comments, analyzing specific issues arising in a legislative or rulemaking context as well as direct participation in the legislative or regulatory process. These activities can be undertaken in collaboration with a Migrant provider or undertaken independently if the Migrant provider does not have funding permitting legislative or regulatory participation. In conjunction with such advocacy, private lawyers can help legal services and other advocates who are engaged in policy advocacy gain access to key decision makers and as well as key allies.

²⁰See Julie Justicz, *Children in SSI Project Update*, in DIALOGUE. at p. 21, Vol. 1, No. 4, Fall 1997

Provide transactional assistance to job creation and community development efforts. Using transactional legal skills and expertise, private lawyers and law firms can assist Migrant programs or undertake directly legal work necessary to help community organizations create jobs, build housing or develop parts of reservations or section of urban areas where Migrants reside.

2. Law School Clinics

Migrant programs should help create and conduct law school clinics focusing on representing migrant farm workers and Migrant law. Such clinics not only expose law students to Migrant law and Migrant access issues but also provide representation to Migrants that would not be otherwise available.

E. ENSURE HIGH QUALITY, COORDINATED, EFFICIENT AND EFFECTIVE CIVIL LEGAL ASSISTANCE

1. Creating a Community of Advocates

To ensure a full range of legal assistance options to all eligible Migrants in all civil justice forums, legal providers throughout a state, including Migrant providers and their partners need to work together in a coordinated and collaborative manner. Where unrestricted providers exist, it is particularly important that providers who are restricted in the services that they can provide work with providers who are not restricted in order to ensure the availability of the full range of legal services to low-income Migrants. In addition, legal providers must work collaboratively with one another and the broader community to use and integrate all individuals and organizations providing civil legal assistance to low-income persons, including Migrants.

More than collaboration is needed, however. Providers throughout a state, whether they be general programs or Migrant programs, must coordinate their activities to make the highest and best use of all available resources; minimize duplication of capacities and administration; develop and maintain coordinated and accessible client intake, advice and brief services and referral systems; and maintain organizational relationships and structures that maximize economies of scale and ensure the effective use of existing and emerging technologies. Providers also need to coordinate to ensure that legal assistance is available when needed and to respond quickly to client emergencies including those created by natural disasters or by significant changes in the law.

2. Expertise and Flexibility

Legal providers must have the substantive expertise, institutional presence, and experience necessary to provide high-quality legal assistance consistent with the standards of practice within the state and with national standards of provider

performance outlined in the ***ABA Standards for Providers of Civil Legal Assistance***. Substantive expertise on Migrant law is particularly important in Migrant advocacy. In addition, institutional presence is important to effective, high quality representation of low-income persons including Migrants because of the changing nature of the laws affecting them and the shift in decision making from the federal to state levels. Providers will be called upon to ensure that the rights and interests of low-income Migrants are taken into account by state and federal courts, administrative agencies, legislative bodies and other private and public institutions that make decisions affecting such persons.

Legal providers for Migrants must also have the capacity and flexibility to identify and respond effectively and efficiently to new and emerging legal trends and changes in the nature of the legal problems of low-income Migrants. Substantive strategies and appropriate techniques of advocacy must be constantly reappraised to respond to changing client legal needs. In addition, providers within a state including Migrant programs, need the flexibility to reconfigure their structures, integrate their activities, and reallocate their resources to carry out new or necessary activities to respond to changing client legal needs. Such flexibility cannot be attained unless sufficient support exists within both the state and national system to identify and respond to emerging legal trends and changes in the nature of the legal problems of low-income Migrants through training, availability of specialized expertise, and other resources.

3. Collaboration with human services providers

To create a true community of advocates, legal providers, including Migrant programs and components, will also need to coordinate and collaborate with churches, government and human services providers, hospitals, community based organizations, low-income groups and other entities to deliver holistic and interdisciplinary services and to enable non-legal services providers to provide their clients with accurate and relevant information about legal rights and options and how to access the system.

Developing partnerships and collaborations with a variety of providers and community entities, including federal, local and state governmental agencies, can be a very effective way of providing critical services and maximizing assistance to low-income clients. Often, more clients can be reached through such collaborations than by working in isolation. There are other advantages as well from such partnerships and collaborations. These groups can directly influence policy, often more effectively than the legal services provider. Moreover, joining in partnerships with other human services providers can result in increased funding for the legal services program, either directly or as a line item in the human services agencies budget. Finally, such partnerships can create a greater awareness of the substantive challenges facing low-income persons, including Migrants and increased understanding of the role of civil legal assistance.

F. EFFECTIVE USE OF TECHNOLOGY

As the *Basic Policy Issues* paper recognizes, the Migrant civil legal assistance system of the future will have to use the most up-to-date technology to ensure efficiency and effective communication, coordination and collaboration, to access a broader base of knowledge, work more efficiently, and reach more clients. Thus, Migrant programs and components will need to take full advantage of existing and innovative technologies and maximize the use of technology to deliver high quality legal assistance. These technologies can be divided roughly into three groups: (1) Program management/delivery of legal services to clients by attorneys or other advocates; (2) Support and information for attorneys and other advocates; and (3) Assistance to individuals who choose to or must attempt to access the tribal court system or the state civil legal system without an attorney or other advocate.

1. Program Management/Service Delivery

The most familiar use of advanced computer technology is to automate routine office functions. Computerized forms and pleadings, automatic benefit calculation programs, case management systems that include docketing and calendaring, document assembly and timekeeping software all can increase staff productivity and the number of clients served. If client education materials are made available on-line, advocates can download those materials and easily customize them for their local communities.

In addition to office automation, computer and telephone technologies offer the opportunity to centralize intake and to offer telephone hotlines that provide clients with brief advice and referrals. Although centralized intake and hotlines may not work well for some Migrant clients, they should be considered as part of the state planning process. Technology can also be used to link Migrant program offices, and to link different organizations, through e-mail and shared databases, which enable staff to work on cases with people at other offices or organizations. Providers can communicate with courts, share information about clients with social workers, churches and others working on clients' needs, access common statewide resource materials and work easily across the boundaries of Migrant and basic field staff programs, private firms, law schools, and other providers.

In addition, technology can help providers better understand the work and productivity of staff and the results which the work is achieving for Migrants.

Thus, Migrant providers must invest in technology for acquisition of hardware and software on an ongoing basis. In addition, staff must have access to and adequate training for use of up-to-date technological tools to access information, communicate with colleagues, courts and clients, and work productively.

2. Support

Another major role of technology is to provide Migrant advocates with support and resources from outside their own offices. Computer-assisted legal research, including fee-based services, such as Lexis and Westlaw, CD-ROM products, and the Internet, can dramatically reduce time spent on legal research and enable a much wider net to be cast. If they are stored electronically, advocates also can access pleadings from other cases and other organizations, along with articles and other useful documents, and can use practice manual and other substantive law guides. Training modules can be available on the Internet, using interactive and discussion technologies, and advocates also can take advantage of audio conferencing, video conferencing, and videotape.

The Internet can expedite the transmission of information about new opinions, legislation, regulations, and other developments requiring the response of the Migrant civil legal assistance community. "Push" technology can be used to get important information directly into advocates' e-mail-boxes. Advocates can share information and advice through e-mail, web-based discussion groups, and listservs, including information about substantive law developments as well as upcoming trainings, conferences, and community meetings.

As a result, advocates will develop inter-organizational and lateral communications with advocates in other states as well as inter-connectedness essential to the creation of a broad community of advocates.

3. Client Assistance and Education

Technology also has tremendous potential to educate clients, including Migrants, about their rights, help them understand when they could benefit from accessing the legal system, and help them find a lawyer. At the same time as technology presents enormous opportunities, it also has the potential to disadvantage low-income people and Migrants disproportionately, and the civil legal assistance community, including Migrant programs, must develop the capacity to address these issues. At the most basic level, Migrant programs and other civil providers need to monitor and evaluate their own use of new technologies, particularly in the area of intake and hotlines, to ensure that clients are obtaining favorable outcomes. Similarly, as clients are increasingly required to access courts, government agencies, and private sector businesses through telephone menus and computers, providers must ensure that these systems can accommodate people with limited access to computers and limited educational backgrounds and must be alert to unintended consequences of computerization. Finally, Migrant programs, as well as other civil providers, must work

with the larger community to ensure that Migrants have equal access to computers and computer training through public libraries, schools, and social service agencies.

CONCLUSION

Migrant providers and the entire Migrant civil legal assistance delivery system face a cluster of challenges that are deep and fundamental if individual programs and the overall system are going to obtain excellence in delivery. Migrant programs and components must themselves develop new methods of delivery, effectively engage clients, use technology to the fullest extent possible, provide a full range of services to individual Migrants, utilize private lawyers and law students and work to rebuild the support system. At the same time, Migrant providers must become an integrated part of the state planning process and ultimately the state integrated delivery system. Migrant providers must also seek to diversify their funding and work within state resource development efforts to increase funding for Migrant advocacy. While LSC, IOLTA and the national organizations such as NLADA and CLASP have critical responsibilities to assist Migrant Programs to improve delivery, ultimately such improvements can only occur through effective leadership from the Migrant community of advocates.